

be construed as a stand-alone claim that the petitioner's Fifth Amendment rights had been violated under *Miranda v. Arizona*, 384 U.S. 436 (1966), and should, as such, be deemed procedurally defaulted.

Although the Petition clearly articulates the claim as a stand-alone Fifth Amendment claim (*see* Doc. No. 1, at 4), the supporting Memorandum argues it as a fully exhausted ineffective assistance of counsel claim (Doc. No. 10, at 10–12), and the petitioner's Reply, filed by counsel,² also characterizes the claim as an ineffective assistance claim (*see* Doc. No. 20, at 16 (“Petitioner argued just as he does here, that Trial Counsel was ineffective for failing to move to suppress because the failure of defense counsel to file a plainly meritorious motion to suppress may constitute ineffective assistance of counsel.”)). The R&R, based on the petitioner's characterization of his own claim, likewise construes it as a fully exhausted claim that trial counsel was constitutionally ineffective for failing to move to suppress the plaintiff's statement to police based on the failure to provide a timely *Miranda* warning. (Doc. No. 37, at 14.) The R&R recommends, however, that the relief on the basis of this claim be denied. (*Id.*)

The respondent's Objection, which makes no difference to the outcome of this case, is **OVERRULED**, as the R&R did not err in construing Ground One as a claim for ineffective assistance of counsel rather than as a (clearly defaulted) stand-alone Fifth Amendment claim.

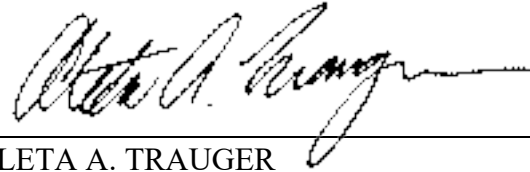
Because the petitioner has not filed timely objections to the R&R, the court **ACCEPTS** the R&R in its entirety. The Petition (Doc. No. 1) is **DENIED**, and this case is **DISMISSED**. Further, in view of the petitioner's decision not to file objections, the court **DENIES** a Certificate

² The petitioner's original Petition and supporting Memorandum (Doc. Nos. 1 and 10) were filed *pro se*. Counsel later entered an appearance on behalf of the petitioner (Doc. No. 19) and filed a Reply (Doc. No. 20) on his behalf.

of Appealability (“COA”). The petitioner may, however, request a COA directly from the Sixth Circuit Court of Appeals. Fed. R. App. P. 22(b)(1).

This is a final judgment for purposes of Federal Rule of Civil Procedure 58.

It is so **ORDERED**.

A handwritten signature in black ink, appearing to read 'Aleta A. Trauger', is written over a horizontal line.

ALETA A. TRAUGER
United States District Judge